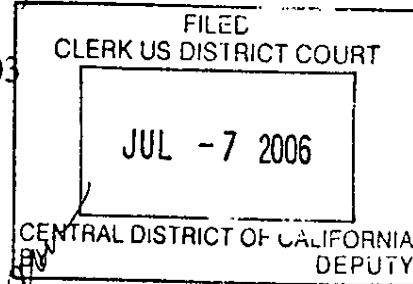
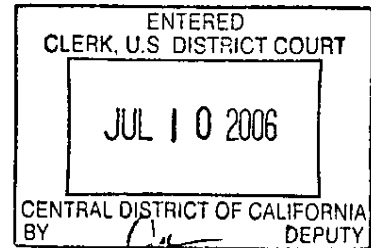


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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

NATURAL RESOURCES DEFENSE
COUNCIL, INC.; INTERNATIONAL
FUND FOR ANIMAL WELFARE;
CETACEAN SOCIETY INTERNATIONAL;
OCEAN FUTURES SOCIETY;
JEAN-MICHEL COUSTEAU,

Plaintiffs,

v.

DONALD C. WINTER, Secretary of the
Navy; UNITED STATES DEPARTMENT
OF THE NAVY; CARLOS M. GUTIERREZ,
Secretary of the Department of Commerce;
NATIONAL MARINE FISHERIES
SERVICE; WILLIAM HOGARTH, Assistant
Administrator for Fisheries of the National
Oceanographic and Atmospheric
Administration; ADMIRAL CONRAD C.
LAUTENBACHER, JR., Administrator of the
National Oceanographic and Atmospheric
Administration,

Defendants.

No. CV06-4131-FMC (FMOx)

**SETTLEMENT
AGREEMENT**

THIS CONSTITUTES NOTICE OF ENTRY
AS REQUIRED BY FRCP, RULE 77(d)

SCANNED

58

1 Pursuant to the Court's July 3, 2006 Temporary Restraining Order, the
2 plaintiffs, Natural Resources Defense Council, et al. ("NRDC"), and the defendants,
3 the United States Department of the Navy ("Navy"), the National Marine Fisheries
4 Service ("NMFS"), et al. ("the United States"), (collectively "the parties") met and
5 conferred and have arrived at the following Settlement Agreement ("Agreement"),
6 which is intended to settle all claims in the above-captioned litigation:

- 7 1. All negotiations leading up to this Agreement are confidential.
- 8 2. This Agreement is not to be construed as a concession by either party as to (a)
9 the potential impacts on marine mammals or other animals of operating mid-
10 frequency active sonar ("MFA sonar"), (b) the validity of any other fact or legal
11 position concerning the claims or defenses in the above-captioned action, or (c)
12 the extent of measures required to comply with the National Environmental
13 Policy Act ("NEPA"), the Marine Mammal Protection Act ("MMPA") or other
14 environmental laws.
- 15 3. This Agreement shall not be deemed a waiver by either party of the right to
16 claim or oppose fees and other expenses as provided in 28 U.S.C. § 2412(d).
- 17 4. This Agreement shall remain in effect from July 7, 2006 until the conclusion
18 of anti-submarine warfare ("ASW") exercises during the Rim of the Pacific
19 2006 ("RIMPAC 06") multi-national training exercise on July 28, 2006.
- 20 5. The measures required by this Agreement pertain to RIMPAC 06 only.
- 21 6. In addition to the requirements imposed on the use of MFA sonar during
22 RIMPAC 06 under the Incidental Harassment Authorization ("IHA") issued by
23 NMFS on June 27, 2006, which were incorporated into the National Defense
24 Exemption invoked by the Deputy Secretary of Defense on June 30, 2006, the
25 following measures and/ or certifications apply to the use of MFA sonar during
26 RIMPAC 06:
27
28

1 A. Monitoring

- 2 (1) The Navy agrees to post two dedicated marine mammal lookouts
3 for choke point exercises and the specific Pacific Missile Range
4 Facility ("PMRF") exercises identified in IHA sec. 5(n) on all
5 surface ships engaged in those exercises that operate MFA sonar
6 during RIMPAC 06.
- 7 (2) The Navy agrees to post one dedicated marine mammal lookout
8 on all surface ships operating MFA sonar for all other exercises
9 during RIMPAC 06.
- 10 (3) The Navy confirms the presence of at least three non-dedicated
11 watchstanders on all surface ships operating MFA sonar during
12 RIMPAC 06.
- 13 (4) The Navy will notify all ASW-capable surface ships that non-
14 dedicated watchstanders are required to look out for marine
15 mammals during RIMPAC 06 and that all sightings of marine
16 mammals are to be reported to the appropriate watch stations for
17 dissemination and appropriate action.
- 18 (5) The Navy agrees to ensure that aircraft operating in PMRF
19 airspace during RIMPAC 06 will monitor the area for marine
20 mammals during their assigned missions. The Navy agrees that
21 these aircraft will monitor the area throughout any PMRF MFA
22 sonar exercises and that all sightings of marine mammals will be
23 reported to the appropriate watch stations for dissemination and
24 appropriate action.
- 25 (6) All personnel engaged in passive acoustic sonar operation during
26 RIMPAC 06 will monitor for marine mammals and report the
27 detection of any marine mammal to the appropriate watch station
28 for dissemination and appropriate action. All aircraft flying low

1 enough to reasonably spot a marine mammal during RIMPAC 06
2 will watch for marine mammals and report the detection of any
3 marine mammal to ships in the vicinity of the sighting for
4 dissemination to local forces and appropriate action. Appropriate
5 action means taking mitigation measures required under the IHA
6 and disseminating the information to other units and
7 watchstanders for increased situational awareness.

8 B. Northwestern Hawaiian Islands Marine National Monument

9 (1) The Navy certifies that no mid-frequency active sonar events are
10 planned or will be planned for RIMPAC 06 that will take place
11 within the boundaries of the Northwestern Hawaiian Islands
12 Marine National Monument.

13 (2) The Navy certifies that no mid-frequency active sonar events are
14 planned or will be planned for RIMPAC 06 that will take place
15 within 25 nautical miles of the Northwestern Hawaiian Islands
16 Marine National Monument.

17 C. Sonar Use Outside Designated RIMPAC ASW Exercises

18 The Navy agrees that during RIMPAC 06 mid-frequency active sonar
19 will not be used other than in RIMPAC anti-submarine warfare
20 exercises, except as required for maintenance and equipment checks.

21 D. Stranding Hotline

22 The Navy agrees that on or before July 12, 2006, it will publish the
23 number for the NMFS stranding hotline in the local Hawaii press during
24 RIMPAC 06 to ensure public awareness of its existence and availability.

25 7. NRDC agrees to dismiss the above-captioned lawsuit in full, with prejudice,
26 and without any further briefing on the merits, except that it reserves the right
27 to seek attorneys' fees and expenses as provided in 28 U.S.C. §2412(d).

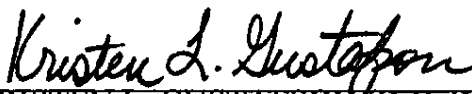
28 8. The United States agrees to dismiss its appeal, No. 06-55928, to the Ninth

SCANNED

1 Circuit Court of Appeals from the District Court's July 3, 2006 Temporary
2 Restraining Order.

3
4 Agreed to and submitted this 7th day of July, 2006
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6

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18 **Cetacean Society International;**
19 **League for Coastal Protection;**
20 **Ocean Futures Society; and Jean-Michel Cousteau**
21
22
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CERTIFICATE OF SERVICE ELECTRONICALLY AND BY MAIL

I am over the age of 18 and not a party to the within action. I am employed by the Office of United States Attorney, Central District of California. My business address is 300 North Los Angeles Street, Suite 7516, Los Angeles, California 90012.

On July 7, 2006, I served the **Settlement Agreement** on each person or entity named below by enclosing a copy in an envelope addressed as shown below and placing the envelope for collection and mailing on the date and at the place shown below following our ordinary office practices.

I also served a copy of said document on the same day via facsimile. Date of mailing July 7, 2006. Place of mailing: Los Angeles, California.

Person(s) and/ or Entity(ies) to Whom mailed:

**Richard B. Kendall
Alan J. Heinrich
Gregory A. Fayer
IRELL & MANELLA LLP
1800 Avenue of the Stars, Suite 900
Los Angeles, CA 90067-4276
Tele: (310) 277-1010/ Fax: (310) 203-7199**

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on: July 7, 2006 at Los Angeles, California

Janice Johnson